

Appl. No. 10/786,502
Amdt. dated January 19, 2006
Reply to Office Action of 10/19/05

PATENT

Amendments to the Drawings:

The attached sheet of drawings includes changes to Fig. 3. This sheet, which includes Fig. 3 replaces the original sheet including Fig. 3.

Attachment: Replacement Sheet

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REMARKS/ARGUMENTS

Claims 1-130 are pending in the application. Claims 1-103 were withdrawn from consideration. Claims 104-127 were allowed. Claims 128-130 were rejected. Claim 129 has been amended, support for this amendment is found in the Specification, e.g., at page 22, lines 7-10 and Figure 11.

Applicants wish to thank the Examiner for the allowable subject matter and respectfully request reconsideration of the remaining rejections in view of the following remarks

Drawings

Figure 3 has been amended as requested by the Examiner on page 2 of the office action and a replacement sheet is included herewith.

Rejections under 35 U.S.C. § 102

Claims 128-130 are rejected under 35 U.S.C. 102(e) as being anticipated by Brimhall U.S. 6,359,993. The rejection is traversed in part and overcome in part.

Applicants respectfully traverse the rejection in that Brimhall does not teach all elements of the invention of claims 128-130. At the outset, Applicants wish to point out that it appears that the Examiner, in referring to Brimhall on page 3 of the office action, meant to say that the "skirt like portion" was element 242 as opposed to element 256 indicated in the office action. Applicants base this belief in that Brimhall indicates that portion 242 provides a skirt that partially encloses the open end 220 of receiver module 214. See Brimhall, Col 10 lines 46-52. Also, Applicants respectfully point out that Brimhall does not define element 238, as a tube, but rather as a membrane which forms tip 212. See Brimhall, Col 10 lines 25-27. However, for ease of discussion in responding to the Examiner's arguments, Applicant will refer to element 238 as tube 238. Also, in order to rebut specific portions of the Examiner's arguments, Applicants will sometimes refer to tip 212 under the assumption that the Examiner meant to refer to this element in her discussion, as opposed to element 238.

Applicants specifically traverse the rejection because contrary to the assertions of the Examiner, a close examination of Brimhall reveals there are several elements of Brimhall which do not read on the limitations of claims 128-130. Applicants will address each claim in

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turn. In regard to claim 128, portion 242 is not an appendage of tube 238 as the Examiner has contended, because Brimhall specifically teaches that 242 is a portion of element 238 and not a separate component. See Brimhall, Col 10, lines 46-52 and Figure 7. Otherwise, the question becomes what part of tube 238, is the appendage, and what part is not? Further, if the Examiner maintains her assertion that element 256 is an appendage skirt portion, then under this scenario, Figure 7 shows that one would have one alleged appendage 280 attached to another alleged appendage 256 and not to tube 238 as the Examiner contended. See Brimhall, Figure 7. Here again, the same question arises. Accordingly, withdrawal of the rejection is respectfully requested.

Brimhall is also deficient with respect to the invention of claim 128, because contrary to the Examiner's assertion, tube 238 does not necessarily conduct sound to the receiver module 214. This is because Figure 8 of Brimhall shows the distal end of receiver module 214 including speaker 232 extending all the way to the distal end of tip 212 (See Figure 8). This positioning is further evidenced by Brimhall's description of the positioning of the distal end 290 of the retrieval cord relative to the distal end of tip 212 and the distal end 231 of the receive module. See Brimhall Col 10, lines 65-68. Thus, there is little or no sound conducted within tip 212 from speaker 232 to the tympanic membrane since the speaker 232 appears to be as close to the tympanic membrane as tip 212. Accordingly, withdrawal of the rejection is respectfully requested for this separate and additional reason.

Regarding claim 129, this rejection is traversed because contrary to the Examiner's assertions, central passage 258 does not conduct sound from receiver 214 to the tympanic membrane because, as described above, the receiver is as close to the tympanic membrane as passage 258. In fact, the stated function of passage 258 is actually, antithetical to sound conduction because passage 258 is intended to fit over and "snugly engage" receiver module 214. See Brimhall Col 10, lines 30-33. However, without acquiescing to propriety of the rejection, Applicants have amended claim 129 to recite that the second conduction channel includes a directional feature to direct occlusion sound away from the tympanic membrane. Brimhall does not teach or suggest such a feature. Accordingly, withdrawal of the rejection is respectfully requested.

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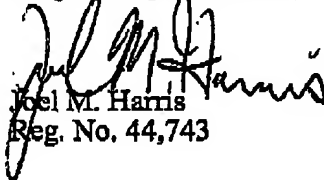
Regarding claim 130, this rejection is traversed because as described above, passage 258 can not deliver received sound to an acoustically sealed space since the function of passage 258 is to snugly engage module 214. Also alleged means 280 does not direct occlusions sounds from the ear drum since Brimhall teaches that sound can flow freely in either direction in element 280 so as to flow freely between ambient air and the tympanic membrane. See Brimhall Col 11, lines 4-10. Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

It is believed that no fees are due with this response; however, should any fees be required under 37 C.F.R. §§ 1.16 to 1.21 for any reason, the Commissioner is authorized to charge Deposit Account No 20-1430. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,


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Attachments
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